

NO. 34633-1-III

STATE OF WASHINGTON
COURT OF APPEALS - DIVISION III

STATE OF WASHINGTON,

Respondent,

vs.

GABRIEL XAVIER BROADWAY

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR

FRANKLIN COUNTY

BRIEF OF RESPONDENT

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I. ISSUE PRESENTED

Was there sufficient evidence of Appellant's intent to commit a crime in his sister's bedroom to support the trial court's finding of guilt for Residential Burglary following a bench trial?

II. STATEMENT OF THE CASE

Respondent concurs with Appellant's Statement of the Case.

III. ARGUMENT

When the sufficiency of the evidence supporting a conviction is challenged, the reviewing court considers "whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt." State v. Houston-Sconiers, 188 Wn.2d 1, 15, 391 P.3d 409, 417 (2017)(interior quotation omitted). A challenge to the sufficiency of the evidence "admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom, and leaves determinations of witness credibility to the fact finder." Id.

Appellant argues the trial court's finding of fact number 9, which found Appellant's intent in entering his sister's bedroom was to take her property, is unsupported by the record. Brief of App. 3.

In its review, this Court will not consider the findings alone; it will look to the entire record. State v. Gatlin, 158 Wn. App. 126, 130-31, 241 P.3d 443, 446 (2010).

The trial court heard testimony regarding thefts that had occurred in the home. Shyanne, the victim, testified as to personal items Appellant has taken from her in the past. RP 16.

There was testimony that all of the children have been caught stealing in the past. RP 18, 28, 32, 36, 41, 43. However, there was also testimony demonstrating the other children were not the ones taking Shyanne's belongings around the time of this incident. Cheri testified Vincent was caught stealing something at another's home. RP 28. Vincent, then sixteen, also testified he'd stolen from Shyanne's room when he was "probably eight or nine." RP 36. Christian admitted he'd been caught stealing once. RP 32. Cheri testified regarding the steps she'd taken to prevent Appellant from stealing from family members, as well as the discipline she'd impose in response to his thefts. RP 22-23. She also testified about finding stolen items under Appellant's mattress as well as between his bed and the wall, and that Appellant admitting taking those items. RP 23.

While items that were stolen from Shyanne were found in common areas, as well as in a dresser drawer in Christian's room, the trial court was convinced it that Appellant was the one responsible for taking those items. Shyanne testified as to her concern that Appellant may have entered her bedroom to steal her property "again." RP 14.

This case has a significant factual difference that distinguishes it from State v. Woods, 63 Wn.App. 588, 821 P.2d 1235 (1991). In Woods, that appellant's mother testified she had barred him from being in the family home if she was not present "because of problems the two were having." 63 Wn.App. at 589, 821 P.2d at 1236. There is no indication of him being barred from the home because of pattern of theft. Here, Appellant was barred from his sister's and parents' bedroom in response to his history of stealing from them. RP 22-23.

While the findings could have been more specific, as noted above, the findings do not stand alone. Appellant's prior actions of taking the property of family members, and those items being found

hidden under his mattress and behind his bed, demonstrate a pattern of depriving the owner of that property. When Shyanne saw Appellant moving in the shadows of her darkened bedroom, he was trying to get back into the bathroom. RP 12. "Flight is circumstantial evidence of guilt." State v. Baxter, 68 Wn.2d 416, 421, 413 P.2d 638, 642 (1966). Appellant's attempt to escape the room undetected, combined with his history of thefts of Shyanne's property, provide ample evidence on which the trial court relied in finding Appellant guilty. "[A] trial judge is presumed to know the rules of evidence and is presumed to have considered only the evidence properly before the court, and for proper purposes." In re Harbert, 85 Wn.2d 719, 729, 538 P.2d 1212, 1218–19 (1975).


IV. CONCLUSION

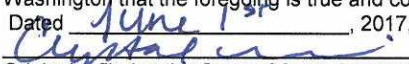
Viewed in the light most favorable to the State, the trial court heard sufficient evidence to find the State met its burden to prove Appellant's guilt beyond a reasonable doubt. Given this, the State respectfully asks this Court to affirm his conviction.

Dated this 1st day of June, 2017.

Respectfully submitted,

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<p>Andrea Burkhart</p> <p>Andrea@BurkhartandBurkhart.com</p>	<p>I hereby certify that a copy of the foregoing was delivered to opposing counsel sent via this Court's e-service by prior agreement of the parties pursuant to GR30(b)(4). I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.</p> <p>Dated <u>June 1st</u>, 2017, Pasco WA</p> <p></p> <p>Original e-filed at the Court of Appeals; 500 N. Cedar Street, Spokane, WA 99201</p>
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FRANKLIN COUNTY PROSECUTOR'S OFFICE

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